THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.22242 of 1997

DATED: 19.04.2007

Between:

P.Venkataswara Rao (died) per L.R.
.. Petitioner

And

Andhra Bank, rep. by its Chairman &
Managing Director,
Central Office, RBI Street,
Saifabad, Hyderabad and others. .. Respondents

THE HONOURABLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.22242 of 1997

ORDER:

This Writ Petition is filed seeking Certiorari to call for the records relating to and connected with Ref.No.666/20/V/155/607, dated 06.10.1995 and Ref.No.666/20/V/155/794, dated 12.12.1995 of the second respondent and quash the same as arbitrary and illegal, and consequently direct the respondents to reinstate the petitioner with continuity of service and other attendant benefits.

2. Before going into the merits, it is necessary to notice that during the pendency of the writ Petition, the petitioner died and his legal representative was brought on record.

3. The case of the petitioner, in brief, is that the petitioner was working as a Middle Management Grade-II Officer in Andhra Bank. While he was working at Saifabad Branch, for certain irregularities purported to have been committed by the petitioner, he was issued with a charge sheet enumerating six charges. The charges leveled against the deceased petitioner as per the charge sheet are as hereunder:

> "1. The page total in the cash scroll maintained by you on 8.1.85 relating to the transactions C-76 to C-91 was allowed to be done by the then cashier, Mr.M.Sudarshan, who had inflated the totals by Rs.10,000/-. The correct

totals of the said column is Rs.4950/- but was shown as Rs.14,950/-. This act of yours had facilitated Mr.M.Sudarshan to misappropriate funds to the tune of Rs.10,000/- by inserting in 8.1.85 vouchers, a fake and forged withdrawal dt.8.1.85 for Rs.10,000/- purported to have been drawn by SB a/c no.5361 account-holder."

2. You were negligent in scrolling the item of cash payment of SB cheque for Rs.2,000/- drawn by SB 5613 a/c holder on 20.8.85 twice under scroll no.49 and 52. Mr.Sudarshan, the then cashier of the branch taking advantage of double scrolling of the above item, inserted a fake and forged withdrawal for Rs.2,000/- for relevant dates vouchers, purported to have been drawn by SB 5313 a/c holder and misappropriated the amount, because of your negligence, the bank is exposed to financial risk of Rs.2,000/-.

3. You were negligent in scrolling the item of cash payment of SB 852 withdrawal for Rs.7,500/- twice on 20.12.85 under scroll nos.49 and 51. Mr.Sudarshan, the then cashier of the branch, taking advantage of double scrolling of the above item, inserted the following fake and forged withdrawals and misappropriated Rs.7,500/-.

a) SB withdrawal for Rs.4,000/- purported to have been
drawn by SB 5246 account-holder.

b) SB withdrawal for Rs.3,500/- purported to have been
drawn by SB 5341 account-holder.

Because of your negligence, the Bank is exposed to financial risk of Rs.7,500/-.

4. You were negligent in authorizing cash payment of the cheque for Rs.1,000/- on 6.7.84 drawn by SB 206 a/c holder in favour of M/s LIC Employees' Co-op. Credit

Society Ltd. since the transaction was already put through transfer scroll. Mr.M.Sudarshan, the then cashier of the branch, taking advantage of the above lapse, inserted in the day's vouchers a forged withdrawal for Rs.1,000/- purported to have been drawn by SB 4159 a/c holder, an account which was closed on 8.9.83 and misappropriated the same, because of your negligence, the bank is exposed to a financial risk of Rs.1,000/-.

5. You had authorized debit transactions of Rs.58,000/- on 15.5.1985 in the SB a/c.403 favouring Md.Ibrahim and Akthar Sultana, without verifying the genuineness of the credit item of Rs.25,000/- dt.13.5.85 (a transaction which was immediately prior to the debit transaction allowed by you) since the balance struck on 13.5.1985 is not authenticated. From the scrutiny of the relevant documents of 13.5.85, it is observed that there was no such remittance. Because of your negligence in not verifying the genuineness of the transactions of 13.5.85 the Bank is exposed to financial risk of Rs.25,000/-.

6. Mr.V.Satyanarayana Raju had remitted an amount of Rs.10,000/- into his SB 4951 account on 13.3.1984. This transaction is reflected in the concerned ledger sheet and the pass book. Cash scroll does not show any such remittance. Mr.M.Sudarshan, the then cashier of the branch had received the amount, misplaced the challan after the entry was made in the ledgersheet and misappropriated the amount. The balance struck in the ledgersheet after this credit entry is not authenticated. Without verifying the genuineness of this transaction, you had authenticated the balance struck in the subsequent transaction and thus exposed the Bank to financial risk of Rs.10,000/-, since the party had subsequently withdrawn the amount."

After conducting a detailed enquiry into the matter, the petitioner was dismissed from service. Aggrieved by the same, the petitioner

carried the matter in appeal and the statutory authority rejected the same. Aggrieved thereby, the present writ petition is filed.

4. A detailed counter affidavit has been filed by the respondents denying the material allegations made by the petitioner in the affidavit filed in support of the writ petition. It is the case of the respondents that the petitioner and Sri Sudarshan, the then Cashier, were convicted and sentenced to undergo six months rigorous imprisonment vide CC.No.7/1994 and also to pay a fine of Rs.3,000/-, and when the matter was carried by way of appeal before this Court, by an order dated 21.12.1999, conviction was confirmed. Though, the sentence was reduced to that of simple imprisonment for a period of three months, this fact was suppressed by the petitioner. Moreover, the enquiry was conducted following the due procedure giving fair and reasonable opportunity to the petitioner and following the principles of natural justice, and in fact, the petitioner participated in the enquiry all through. They further contend that the punishment of dismissal from service imposed by the Disciplinary Authority was passed after appreciating evidence available before it and the order of the appellate authority in confirming the orders passed by the disciplinary authority is proper and valid.

5. Heard both the counsel.

6. It is the contention of the learned counsel for the petitioner that the documents, which were relied upon by the Management and formed basis for holding the petitioner guilty of the charges, were not supplied to him. Further, the charges were not proved. Apart from this, the punishment of dismissal of the petitioner from service is disproportionate to that of the misconduct alleged.

7. Whereas, the learned counsel for the respondents Sri K.Lakshmi Narasimha contended that the petitioner was involved in a grave misconduct of negligence of his duties in supervising the Bank accounts properly, which resulted in a huge loss to the Bank. Further, the enquiry was conducted after giving full opportunity to the petitioner to defend himself properly. The findings recorded by the enquiry officer are based on evidence available on record. Neither the findings are contrary to evidence on record nor do they appear to be perverse. Therefore, no ground is made out calling for the interference of this Court under Article 226 of the Constitution of India.

8. I find no necessity of going into all the details. The whole charge against the petitioner is that he allowed one Sudarshan, Cashier, to handle the scroll registers and make dubious entries, which resulted in financial risk of the Bank. In the entire findings recorded by the Enquiry Officer against each charge, there was no allegation of any intention on the part of the petitioner in allowing the said Sudarshan to manipulate or create dubious accounts of the Bank. In fact, the petitioner himself admitted that it was mistake on his part in not properly supervising the accounts. Further, in the enquiry, the Enquiry Officer gave categorical findings that the petitioner may not be strictly involved, but his negligence made Sri Sudarshan take an advantage of the situation and therefore, it cannot be said that the charges made against the petitioner are not proved. On a careful perusal of the entire material made available on record and also on hearing both sides, it is evident that the charges are proved and the enquiry was properly conducted. However, now, it has to be seen whether the punishment inflicted on the petitioner (since died) was proportionate to that of

misconduct. The learned counsel for the respondents also relied upon various judgments in this regard. I am of the considered opinion that in the peculiar facts and circumstances of this case, those judgments have no relevance to the facts of this case.

9. There is no information available on record that the petitioner has ever committed any such misconduct earlier, which requires to be taken into consideration in warranting his dismissal from service. Therefore, I am of the opinion that the punishment of dismissal is shockingly disproportionate to that of misconduct proved. In a case of this nature, generally speaking, the matter needs to be remanded for reconsideration of the punishment imposed on the petitioner by the Disciplinary Authority, but since the petitioner died and more than seven years elapsed since passing of the impugned order, I deem it appropriate to give a quietus to this litigation at this stage. Therefore, in the interest of justice, the impugned order is set aside and the respondents are directed to impose a punishment of compulsory retirement from service against the petitioner, instead of dismissal from service, as on the date of passing of the impugned order.

10. The Writ Petition is allowed to the extent indicated above. No order as to costs.

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(**C.V.RAMULU,J)**

19.04.2007
v v